

**Bail Slip**

Periyasamy, S/o.Veerakumar, Appellants / Accused No.1 is released on Bail, vide Court order dated 07.08.2013 made in MP(MD) No.1 of 2013 in CrI.A.(MD)No.252 of 2013.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED : 26.08.2019****CORAM:****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CrI A(MD)No.252 of 2013**

1.Periyasamy

2.Soorya

... Appellants/Accused Nos.1 & 2

Vs.

State, rep.by
The Inspector of Police,
Uppiliapuram Police Station,
Trichy District.
(Crime No.363 of 2011)

... Respondent / Complainant

Prayer : This Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to call for the judgment dated 09.07.2013 made in S.C No.165 of 2012 on the file of the Principal Sessions Judge, Tiruchirappalli and set aside the same by way of allowing the appeal.

For Appellants

: Mr.M.Killivalavan

For Respondent

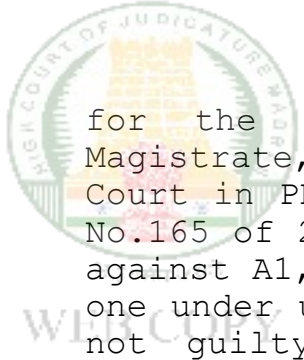
: Mr.A.Robinson

Government Advocate (crl.side)

JUDGMENT

The appellants were convicted for the offence under Section 323 IPC and A1 was sentenced to one year rigorous imprisonment and levied with fine while A2 was levied with fine alone vide judgment dated 09.07.2013 in S.C No.165 of 2012 on the file of the Sessions Judge of Tiruchirappalli Division, Tiruchirappalli.

2.The case of the prosecution is that on 14.12.2011 at about 06.00 P.M., A2 was riding the two wheeler bearing Registration TN 45 X 7773 in Balakrishnanpatti near Koonthalakaruppu Temple. A1 was sitting in the pillion. The deceased Ramasamy was coming from the opposite direction. The two wheeler came perilously close to Ramasamy. When Ramasamy objected to the manner of riding the vehicle, A2 is said to have hit him with M.O.1 stick while A1 squeezed the scrotum of Ramasamy. As a result, Ramasamy had to be admitted in the hospital. He succumbed to the injuries. In this regard, the wife of Ramasamay/PW.1 Maruthayee lodged information before the Uppiliyapuram Police Station leading to registration of FIR/Ex.P12 in Crime No.363 of 2011 for the offence under Section 302 IPC. Investigation was undertaken and after recording the statements of witnesses and after completing the usual formalities, the investigation officer laid final report against both the accused

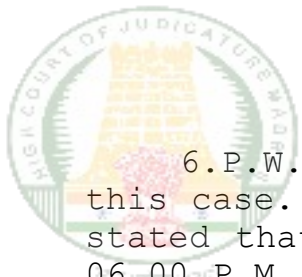


for the offence under Section 302 IPC before the Judicial Magistrate, Thuraiyur. The case was committed to the Sessions Court in PRC No.5 of 2012. The case was taken up for trial in S.C No.165 of 2012. Charges were framed against both the accused. As against A1, it was one under Section 302 IPC. As against A2, it was one under Section 323 and 302 r/w 34 IPC. The accused pleaded not guilty to the charges and claimed to be tried. The prosecution examined as many as 14 witnesses and marked Exs.P1 to P 22 and M.O.1 to M.O.3 were also marked. The defence examined as many as 29 witnesses and marked Exs.D1 and D2. As many as six documents were marked through court witnesses and Exs.X1 to X 6 were as a witness documents. The learned trial judge acquitted the accused for the offence under Section 302 IPC. However, both were convicted under Section 323 IP and sentenced as mentioned above. Challenging the same, this appeal came to be filed.

3.The learned counsel appearing for the appellant reiterated the contentions set out in the appeal memorandum and also filed written documents. He submitted that the appellants should be acquitted in toto. Per contra, the learned Government Advocate (crl.side) submitted that the impugned judgment does not warrant any interference.

4.I carefully considered the rival contentions and perused the evidence on record. The specific allegation against the accused is that there was a quarrel on the road during which the first accused squeezed the scrotum of the deceased While A2 hit him with M.O.1 stick. On the other hand, the defence contention is that no such incident as claimed by the prosecution took place on 14.12.2011. On the other hand, on the previous day, A2 was going in the two wheeler with Ramasamy in the pillion. He lost his balance and both fell down. In the said occurrence, Ramasamy sustained injuries. It was a case of pure accident. This has been given a twist by the wife of the deceased. Two reasons have been put forth for giving this false case. One reason is that the accused did not arrange proper medical treatment for Ramasamy in time which could have prevented his death. It is further stated that the accused did not bear the medical expense. One other reason given is that A1 was attacked by some rowdy elements some time before the occurrence and that the defacto complainant had given a case against them in order to prevent A1 from giving any evidence against them. Those inimically disposed towards A1 had prevailed upon the wife of the deceased/PW.1 to give Ex.P1 complaint.

5.The specific case of the prosecution is that A2 hit Ramasamy with MO.1 stick in his abdomen while A1 squeezed his scrotum and that the deceased Ramasamy died as a result of the said injuries. The prosecution had examined P.W.8 Dr.RVS.Renuga Devi who conducted autopsy on the deceased. She issued Ex.P10 postmortem certificate. In Ex.P10, it has been mentioned that the cause of death was due to shock and hemorrhage and due to multiple wounds.



6.P.W.1 is the wife of the deceased. She is the informant in this case. Her statement was recorded as Ex.P1 complaint. She had stated that on the occurrence date she was returning home at about 06.00 P.M when the accused were coming from the opposite direction riding their vehicle rather perilously close. The deceased Ramasamy raised his voice as to why they are doing so. The accused thereupon committed the acts in question. Ramasamy was given home remedy and since he was unable to bear the pain, he was taken to Thuraiyur Government Hospital on the next day morning at 07.00 A.M. He was referred to further treatment to Tiruchi Government Hospital. But, Ramasamy succumbed to the injury. She identified her thumb impression in Ex.P1. She also claimed that the relationship between them was not cordial. She identified M.O.1 as a stick used by A2 Soorya for assaulting her husband. She also identified M.O.2, the two wheeler which the accused rode at the time of occurrence.

7.P.W.1 was cross examined at length. She admitted that on the occurrence date the deceased was aged around eighty years. She admitted that her husband used to consume liquor. She also admitted that the next day after the occurrence, about 15 villagers including the second accused Soorya left for Sabarimalai. According to her, the occurrence took place on Tuesday. She initially denied the suggestion that the case was one of accident. But, to a specific question as to whether the next day morning whether she told that her husband was hit by a two wheeler and that he is suffering, she answered in the affirmative. She also admitted that at around 11.00 A.M, when A2 Soorya came to the house of P.W.1, she asked the same question. This admission made by P.W.1 in the cross examination is highly significant. If A1 and A2 had actually assaulted Ramasamy, A2 Soorya would certainly not have visited the house of P.W.1. Even according to P.W.1, she claimed to Soorya as well as his friends that her husband's condition was on account of the accident caused by the two wheeler. This admission made by P.W.1 clearly undermines the prosecution case. It is true that in the chief examination, P.W.1 stuck to the prosecution charge. In the cross examination in other places she had stuck to her version. But then, this admission is a vital give-away.

8.The defence has taken immense pains to establish their innocence. As many as 29 witnesses were examined on the side of the defence. The Hon'ble Supreme Court in the decision reported in **AIR 1981 SC 911 (Dudh Nath Pandey vs. State of U.P.)** held that whether the witnesses are examined by the prosecution or on the side of the defence, the approach of the court will have to be one and the same. A witness examined on the side of the defence does not occupy a lower rank. In this case, as many as 7 doctors were examined as witnesses on the side of the accused. All these doctors had given treatment to Ramasamy. The testimony of DW.24 Doctor Edwin Vasantha and that of DW.29 Dr.T.Selvaraj are particularly significant. Both are Government Doctors and not private practitioners brought in by the accused to give a partisan expert opinion.



9. Dr. Edwin Vasantha/DW.24 gave treatment to Ramasamy on 17.12.2011. Surgery had been performed on Ramasamy on 16.12.2011 itself. She had clearly opined that Ramasamy died due to septicemia. It had happened due to the blunt injury in the ilium bone. Since in view of the perforation in the ilium bone, other waste materials got mixed and transferred into the abdomen. It is relevant to note here that Ramsamy was aged around eighty years. His health condition was not all that good. He was addicted to liquor. The written opinion given by DW.24 was marked vide Ex.X2. Likewise, Dr.T.Selvaraj, D.W.29 had also opined that with M.O.1 stick, there was no possibility of sustaining the abdominal injury found on Ramasamy. He had also stated that the injuries found on the body of the deceased could have been caused if a hard object like a two wheeler fell on him.

10. The learned Trial Judge had noted that two medical officers have given two different opinions. What is particularly significant is that Ramasamy died only on 17.12.2011. The defence have testified in unison that on 14.12.2011, A2 Soorya was very much a part of the group of devotees getting ready for their Sabarimala pilgrimage. Therefore, one can come to the safe conclusion that the occurrence in question must have taken place only on the evening of 13.12.2011. Ramasamy died only on 17.12.2011. Ramasamy was quite conscious. He was not in coma stage. No statement was recorded from Ramasamy when he was alive. If as claimed by the prosecution, there was an assault on Ramasamy, certainly a police complaint would have been lodged by P.W.1 or atleast by Ramasamy. No such information was lodged before the police. It was only after the death of Ramasamy, the complaint came to be lodged as if it was a case of murder. The defence had taken so much effort to bring out the complete details with regard to the treatment given to Ramasamy, the deceased. Even in the accident register/Ex.P13 and P14, it has been mentioned that the police intimation was given. It is not known as to why the police did not take any action in the matter. P.W.12, Dr.P.G.Karthick who had given treatment and who issued the accident register had admitted that erasures and corrections are found in the accident register. D.W.11 Suseela is a resident of the same street. She deposed clearly that when she was in the kitchen, she heard a falling sound and she rushed out. She saw the second accused and Ramasamy (deceased) lying under a two wheeler. She called out her husband and they both lifted the two wheeler and Ramasamy. Ramasamy's wife Maruthayee took him to the house. D.W.11 could not be shaken during her cross examination.

11. A careful perusal of the evidence on record leads one to the conclusion that the prosecution case is riddled with doubts. That is why the learned Trial Judge rightly acquitted the accused of the offence under Section 302 IPC. But then, there was no justification in finding them guilty of the offence under Section 323 IPC. The benefit of doubt will go finally in favour of the accused. The impugned judgment is set aside. The appellants are acquitted. The



appeal is allowed. The bail bond executed by the appellants shall stand cancelled. The fine amount if any remitted by the appellants shall be refunded to them.

Sd/-

Assistant Registrar (Crl.side)

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/ /2020

Sub Assistant Registrar(CS)

Skm

To

1.The Principal Sessions Judge, Tiruchirappalli.

2.The Inspector of Police,
Uppiliapuram Police Station,
Trichy District.

3 The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to: The Section Officer, Criminal Section 2 copies
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.D. SENTHIL, Advocate (SR-83524[F] dated 27/08/2019)

Crl A(MD)No.252 of 2013
26.08.2019

SMA/18/03/2020/5P/7C